

## How to Stay Asbestos Legal

Asbestos was extensively used as a building material in the UK from the 1950s through to the mid-1980s. It was used for a variety of purposes and was ideal for fireproofing and insulation. Any building built before 2000 (houses, factories, offices, schools, hospitals etc) can contain asbestos. Asbestos materials in good condition are safe unless asbestos fibres become airborne, which happens when materials are damaged.

### A Duty to Manage

The duty to manage asbestos is contained in regulation 4 of the Control of Asbestos Regulations 2006. It requires the person who has the duty (i.e. the "duty holder") to:

- take reasonable steps to find out if there are materials containing asbestos in non-domestic premises, and if so, its amount, where it is and what condition it is in;
- presume materials contain asbestos unless there is strong evidence that they do not;
- make, and keep up-to-date, a record of the location and condition of the asbestos containing materials - or materials which are presumed to contain asbestos;
- assess the risk of anyone being exposed to fibres from the materials identified;
- prepare a plan that sets out in detail how the risks from these materials will be managed;
- take the necessary steps to put the plan into action;
- periodically review and monitor the plan and the arrangements to act on it so that the plan remains relevant and up-to-date; and
- provide information on the location and condition of the materials to anyone who is liable to work on or disturb them.

There is also a requirement on anyone to co-operate as far as is necessary to allow the duty holder to comply with the above requirements.

In many cases, the duty holder is the person or organisation that has clear responsibility for the maintenance or repair of non-domestic premises through an explicit agreement such as a tenancy agreement or contract.

The extent of the duty will depend on the nature of that agreement. In a building occupied by one leaseholder, the agreement might be for either the owner or leaseholder to take on the full duty for the whole building; or it might be to share the duty. In a multi-occupied building, the agreement might be that the owner takes on the full duty for the whole building. Or it might be that the duty is shared - for example, the owner takes responsibility for the common parts while the leaseholders take responsibility for the parts they occupy. Sometimes, there might be an agreement to pass the responsibilities to a managing agent.

The duty to manage covers all non-domestic premises. Such premises include all industrial, commercial or public buildings such as factories, warehouses, offices, shops, hospitals and schools.

Non-domestic premises also include those 'common' areas of certain domestic premises: purpose-built flats or houses converted into flats. The common areas of such domestic premises might include foyers, corridors, lifts and lift-shafts, staircases, roof spaces, gardens, yards, outhouses and garages - but would not include the flat itself. Such common areas would not include rooms within a private residence that are shared by more than one household such as bathrooms, kitchens etc in shared houses and communal dining rooms and lounges in sheltered accommodation.

### Three Essential Steps In Managing Asbestos

There are three essential steps in the management of asbestos:

1. **find out** whether the premises contain asbestos, and, if so, where it is and what condition it is in. If in doubt, materials must be **presumed** to contain asbestos;
2. **assess the risk**; and
3. **make a plan** to manage that risk and **act on it**.

### Basic Principles In The Management Of Asbestos

Here are some basic principles to remember:

- asbestos is only dangerous when disturbed. If it is safely managed and contained, it doesn't present a health hazard;
- don't remove asbestos unnecessarily - removing it can be more dangerous than leaving it in place and managing it;
- not all asbestos materials present the same risk. The measures that need to be taken for controlling the risks from materials such as pipe insulation are different from those needed in relation to asbestos cement;
- don't assume you need to bring in a specialist in every case (for example, you can inspect your own building rather than employ a surveyor). But, if you do, make sure they are competent.
- if you are unsure about whether certain materials contain asbestos, you can presume they do and treat them as such;
- remember that the duty to manage is all about putting in place the practical steps necessary to protect maintenance workers and others from the risk of exposure to asbestos fibres. It is **not** about removing all asbestos.
- If any ACMs need to be sealed, encapsulated or removed, remember you will need to employ a licensed contractor if the materials are high risk (e.g. pipe insulation and asbestos insulating panels). If the materials are lower risk (e.g. asbestos cement) then an unlicensed but competent contractor may carry out this work.

If you require any further information or assistance please contact a member of the A. H. Allen Ltd team on 01482 644632.